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**ILLINOIS COMMERCE COMMISSION**

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ILLINOIS  
COMMERCE COMMISSION

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Gregory Panko, Complainant )

v. )

Ameritech Corp., f/k/a Illinois )  
Bell Telephone Co., Respondent )

No. 00-0158

CHIEF CLERK'S OFFICE

**COMPLAINANT'S REPLY TO RESPONSE TO MOTION FOR RESTORATION OF SERVICE  
INSTANTER AND TO MOTION TO DISMISS**

Gregory Panko, Complainant, submits this reply to the response to motion for restoration of service instanter and to motion to dismiss of counsel for the respondent, a copy of which response was sent by mail from respondent's location on March 24, 2000 and received by complainant on March 25, 2000. The motion for restoration of service instanter should be granted, and the motion to dismiss should be denied as shown herein.

I. The Motion for Restoration of Service Instanter Does Not Require  
a Showing of an Emergency to Be Granted.

1. The motion for restoration of service instanter cites 83 Ill. Administrative Code, 735.130(h) and 730.190(d)(1), which Sections provide for restoration of service, if disconnected. The said Sections do not require the existence of an emergency situation and do not require waiting until final disposition of a complaint for restoration of service. Complainant paid uncontested amounts and is entitled to a restoration of service.

2. Complainant has a Census 2000 form and a pre-approved credit account form, which have places for a telephone number. Complainant would like to submit the forms with a telephone number in the respective places.

II. Respondent Did Not Follow This Commission's Rules or Regulations  
Regarding the Disconnection of Complainant's Service.

3. The complaint properly alleges that a notice of disconnection issued by respondent did not provide information required by this Commission's rules or regulations. Data attached to the text of the complaint by complainant support the allegations.

4. The notice of disconnection on red paper issued by respondent did not specify particular information in accordance with 83 Ill. Administrative Code, Section 735, Appendices A and B including an amount owed in past due bills, an amount required to be paid for restoration of service as a service charge, and requirements to avoid disconnection in the event of illness. The white sheet of paper could be considered a supplemental statement, not a continuous part of the said notice of disconnection on red paper. It is not the case "the Complainant's challenge to the validity of the notice is without merit."

5. Even if the said notice of disconnection on red paper contained all of the particular information in accordance with 83 Ill. Administrative Code, Section 735, Appendices A and B, respondent still did not comply with 83 Ill. Administrative Code 735.130(e) in subsequently advising complainant of the specific date service was scheduled for discontinuance prior to the incorrect disconnection.

6. Further, respondent did not restore service at complainant's location in compliance with 83 Ill. Administrative Code 735.130 (h) and 735.190(d)(1) on March 17, 1999 with knowledge that uncontested amounts had been paid on March 16, 1999, and the amount not paid was contested.

### III. The Claims of Complainant Are Not Time Barred.

7. The Illinois Public Utilities Act specifies a two-year statute of limitations period for filing of some types of complaints. However, the two-year limitations period is not a general billing limitations period and does not apply to services never rendered (Citizens Utility Company of Illinois v. The Illinois Commerce Commission, 157 Ill. App. 3d 201, 206-208, 510 N.E. 2d 52 (1987)). It does not apply to a contract involving a public utility (Ferndale Heights Utility Company v. Illinois Commerce Commission, 112 Ill. App. 3d 175, 445 N.E. 2d 334 (1982)).

8. 220 ILCS, Section 5/9-252 provides in part:

"When complaint is made to the Commission concerning any rate or other charge of any public utility and the Commission finds, after a hearing, that the public utility has charged an excessive or unjustly discriminatory amount for its product, commodity or service, the Commission may order that the public utility make due reparation to the complainant therefor, with interest at the legal rate from the date of payment of such excessive or unjustly discriminatory amount. ...

"All complaints for the recovery of damages shall be filed with the Commission within 2 years from the date the product, commodity or service as to which complaint is made was furnished or performed, ..." (emphasis supplied)

9. 220 ILCS, Section 5/9-252.1 provides in part:

"When a customer pays a bill as submitted by a public utility and the billing is later found to be incorrect due to an error either in charging more than the published rate or in measuring the quantity or volume of service provided, the utility shall refund the overcharge with interest from the date of overpayment at the legal rate or at a rate prescribed by rule of the Commission. ... Any complaint relating to an incorrect billing must be filed with the Commission no more than 2 years after the date the customer first has knowledge of the incorrect billing." (emphasis supplied)

10. A fair reading of Sections 5/9-252 and 5/9-252.1 discloses that they apply where a customer is seeking a reparation after having paid an excessive or unjustly discriminatory amount or is seeking a refund after having overpaid because of an error in a utility's charging more than the published rate or in measuring the quantity or volume of service provided. The said Sections do not apply to a situation where a customer is seeking to have incorrect, unpaid charges deleted or a situation where a customer has paid a service charge for which no service was received, which service charge itself is not claimed to be excessive or unjustly discriminatory and is not the result of an error in a utility's charging more than the published rate or in measuring the quantity or volume of service provided.

11. The said Sections thus do not apply to complainant's seeking a deletion of a contested amount not paid and do not apply to complainant's seeking a refund of a service charge paid which is not of itself claimed to be excessive or unjustly discriminatory and is not the result of an error in the utility's charging more than the published rate or in measuring the quantity or volume of service provided. The complaint of this action, filed February 14, 2000, regarding services furnished and billed prior to February 14, 1998 is, therefore, not barred by statutory limitation and should not be dismissed.

#### Conclusion

12. Complainant is entitled to a restoration of telephone service and damages for the incorrect disconnection and failure of respondent to restore telephone service on March 17, 1999. For the reasons stated, complainant's

motion for restoration of service instanter should be granted and respondent's motion to dismiss should be denied.

Gregory Panko  
Gregory Panko, Complainant

Signed and subscribed to  
before me

March 31, 2000

Thomas G. Cunningham  
Notary Public



CERTIFICATION OF DELIVERY OF COPY

I, Gregory Panko, certify that on March 31, 2000, I delivered a copy of the foregoing "Complainant's Reply to Response to Motion for Restoration of Service Instanter and to Motion to Dismiss" to the location of Ameritech Corp., 225 West Randolph Street, Chicago, Illinois 60606.

Gregory Panko  
Gregory Panko

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